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PATENT DEPT
INTUITIVE SURGICAL OPERATIONS, INC
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SUNNYVALE CA 94086

MAILED

AUG 03 2010

OFFICE OF PETITIONS

In re Application of :
Jaime Salvador Vargas : DECISION ON PETITION
Application No. 10/661,159 :
Filed: September 12, 2003 :
Atty Docket No. ENDOV-001/US :

This is in response to the petition to withdraw the holding of abandonment filed March 24, 2010. Alternatively, applicant requests consideration of the petition under 37 CFR 1.137(a) or (b) as appropriate. This decision is made in light of the supplement to petition (requested by the undersigned) filed June 15, 2010.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**. Consideration of the petition under 37 CFR 1.137(a) is unnecessary.

The above-identified application became abandoned for failure to file a response to the Notice of Non-Compliant Amendment mailed November 17, 2009. This Office communication set a one-month period for reply. No extensions of time under § 1.136(a) were obtained. As no response was received, the application became abandoned effective December 18, 2009. A courtesy Notice of Abandonment was mailed on February 19, 2010.

In response, applicant filed the instant petition. Applicant requests withdrawal of the holding of abandonment on the basis that the Notice was never received. Alternatively, applicant requests revival of the application pursuant to 37 CFR 1.137(a) or (b), as appropriate.

A review of the application image file wrapper reveals no irregularities in the mailing of the Notice mailed November 17, 2009. Thus, there is a strong presumption that the correspondence was properly mailed to the applicant at the correspondence address of record. In the absence of demonstrated irregularities in mailing of this Notice, applicant must submit evidence to overcome this presumption. As stated in MPEP 711.03(c), the following showing is required:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required.

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Practitioner states that the Office action was not received by the practitioner and that a search of the file jacket and docket

records indicates that the correspondence was not received. Practitioner supplies a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed.

The showing is not sufficient. Practitioner describes the system used for recording an Office action received at the correspondence address of record with the USPTO. However, practitioner does not provide a copy of a master docket record. Rather, practitioner states that to the best of his information and belief, the docketing system does not provide a "master docket for the firm" for a particular date range in any usable form. Thus, practitioner attempts to make the showing based on the individual docketing record for this application.

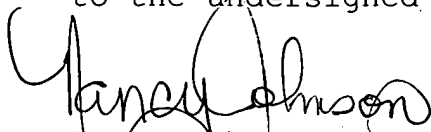
Fundamental to the showing is the reliability of the electronic entries in the docketing system. Practitioner acknowledges that there is an unexplained notation by the computer system of an update to the record on November 24, 2009. This update does not correlate to an actual entry in the record. This update without an explanation correlation in the record of the application suggests an omission in the electronic entries in the docketing record. Of significance, this automated computerized notation of an update to the record, reflection an omission, is made a week after the mailing of the Notice in question. These circumstances raise a question as to the receipt of this Notice at the correspondence address of record. Thus, even if a copy of the master docket record were supplied, on the showing presented, the petition would not be granted.

Given the deficiencies in the showing, it is concluded that the required showing of non-receipt has not been met.

Nonetheless, applicant has met the requirements for revival under 37 CFR 1.137(b). The petition includes the required reply in the form of an amendment, the required statement of unintentional delay and payment of the petition fee. No terminal disclaimer is required.

Technology Center AU 3736 has been advised of this decision. The application is, thereby, forwarded to the Technology Center for consideration of the amendment submitted on petition filed March 24, 2010.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions